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Attorneys for Defendants Jose Builteman and Charles Richey

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VENSON LANE MYERS, Plaintiff,	08CV0117 W (WMc)
v.	**NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT**
L.E. SCRIBNER, et al., Defendants.	Hearing: October 6, 2008 Time: 9:30 a.m. Courtroom: C Judge: Hon. William McCurine, Jr. Oral Argument Not Requested

Please take notice that on October 6, 2008, at 9:30 a.m., Defendants J. Builteman, C. Richey, and L. Scribner will move to dismiss Plaintiff's First Amended Complaint. The hearing will take place before the Honorable William McCurine, Jr., United States Magistrate Judge, in Courtroom C. Oral argument is not requested because Plaintiff is a state inmate representing himself.

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Defendants move to dismiss on the following grounds:

1. Plaintiff has failed to exhaust his administrative remedies.

2. Defendants are protected by immunity under the Eleventh Amendment from liability to Plaintiff for damages.

3. Defendant Scribner cannot be held liable under a theory of *respondeat superior.*

4. Plaintiff has failed to state a claim for which relief can be granted under the First Amendment, the RLUIPA, and the Fourteenth Amendment.

5. Defendants are protected by qualified immunity from liability to Plaintiff for damages.

This motion will be based on this Notice of Motion and Motion to Dismiss, the Memorandum of Points and Authorities in support of this Motion, and the Declarations filed in support of this Motion.

Dated: August 21, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

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/S/ Suzanne Antley

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CERTIFICATE OF SERVICE BY U.S. MAIL

Case Name: **Myers, Venson Lane v. Scribner, et al.**

Case No.: **08CV0117 W (WMc)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 21, 2008, I served the following documents:

NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Manual Notice List

Venson Lane Myers
CDCR # C-29600
Calipatria State Prison
P. O. Box 5005
7018 Blair Road
Calipatria, CA 92233-5005
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 21, 2008, at San Diego, California.

J. Yost — Declarant

[signature] — Signature

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